

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Case No. 5:15-cv-00097-BO

KIRSTEN MESSMER,

Plaintiff,

v.

DONNIE HARRISON, in his official Capacity
as Sheriff of Wake County, North Carolina,
PAT McCRORY, in his Official Capacity as
Governor of North Carolina,
ROY COOPER, in his Official Capacity as
Attorney General of North Carolina, and
FRANK L. PERRY, in his Official Capacity as
Secretary of the North Carolina Department of
Public Safety,

Defendants.

PLAINTIFFS' RESPONSE IN
OPPOSITION TO DEFENDANT
DONNIE HARRISON'S
MOTION TO DISMISS

NOW COMES Plaintiff Kirsten Messmer, by and through counsel and pursuant to Local Rule 7.1(e), and files this response in opposition to Defendant Donnie Harrison's ("Sheriff Harrison") Motion to Dismiss.

Plaintiff filed suit under 42 U.S.C. § 1983 against Sheriff Harrison in his official capacity as Sheriff of Wake County, because the sheriff denies lawful permanent resident aliens, like Plaintiff, the right to apply for and obtain concealed handgun permit. This is a clear violation of the Equal Protection Clause and the Second Amendment. Because of these plain constitutional violations, Plaintiff seeks injunctive relief requiring Sheriff Harrison to follow the United States Constitution and allow Plaintiff to apply for and receive a concealed handgun permit. In the absence of the requested relief, Plaintiff, who currently possesses a concealed handgun permit issued by the State of Utah, will lose her ability to carry a concealed handgun in North Carolina,

where she resides and where she desires to carry a concealed handgun for personal protection and home defense.

In response, Sheriff Harrison moved to dismiss this action based, in part, on his contention that he cannot be held liable for simply enforcing state law. Recognizing that the legal issues before the Court are “virtually identical” to those raised in another lawsuit pending before the Court, Sheriff Harrison has adopted the legal arguments submitted in support of a motion to dismiss in that case, *Veasey v. Wilkins*, No. 5:14-CV-00369-BO (the “Granville County Case”). Plaintiff concurs with Sheriff Harrison’s assertion that “[t]he constitutional challenges to North Carolina’s concealed carry permit laws in both the Granville County case and the instant case are identical[,]” as are “the applicable defenses for Sheriff Wilkins and Sheriff Harrison.” (D.E. 19). Accordingly, to conserve judicial resources, Plaintiff adopts the legal arguments set forth in Felicity M. Todd Veasey and Second Amendment Foundation, Inc.’s Memorandum of Law in Opposition to Defendant’s Motion to Dismiss (the “Granville County Response in Opposition”) as if fully set forth herein. The relevant arguments are set forth in D.E. 23 at pp. 4-9 in *Veasey v. Wilkins*, No. 5:14-CV-00369-BO, which, for the convenience of the Court, are attached as Exhibit A.

For the reasons set forth herein and in the Granville County Response in Opposition, Plaintiff respectfully requests that the Court enter an order denying Sheriff Harrison’s Motion to Dismiss in its entirety.

Respectfully submitted this the 19th day of May, 2015.

WILLIAMS MULLEN

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CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2015, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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